

In Chancery.

BETWEEN

GEORGE HEPBURN,

Plaintiff,

AND

PATRICK HEPBURN, JOHN HEPBURN, JOSEPH ROBERT
McMASTER, ELIZABETH M. McMASTER, GEORGE
ALPHONSUS McMASTER, FRANCIS MARIA MURPHY,
JOHANNA DUFFY, ELLEN DUFFY, EDWARD DUFFY,
DENNIS HAYES, JAMES HENRY RYAN, FREDERICK
ROWLAND, ROBERT JOSEPH HAYES and FRANCIS
WILLIAM HAYES (the last two defendants being infants under
the age of twenty-one years),

Defendants.

City of Toronto.

To the Honorable the Judges of the Court of Chancery.

The Bill of Complaint of the above named plaintiff, George Hepburn, of the city of Edinburgh, in that part of Great Britain called Scotland, gentleman, sheweth as follows :

1. That the late John Hepburn, of the city of London, in the county of Middlesex, in the province of Ontario, gentleman, departed this life at the said city of London, intestate, on or about the fifth day of April, A. D. 1873, without leaving father, mother widow or issue, him surviving.

2. The Plaintiff was a brother of the said intestate ; and the Defendants, Patrick Hepburn and John Hepburn are the children of the late Francis Hepburn, deceased, who was a brother of the said intestate ; the Defendants, Joseph Robert McMaster, George Alphonsus McMaster, Francis Maria Murphy (widow), Johanna Duffy (widow), and Ellen Duffy, are respectively children of the late McMaster, deceased, who was a sister of the said intestate ; the Defendant, Edward Duffy is the husband of the said Ellen Duffy, and the Defendant, Elizabeth M. McMaster is the wife of the said Joseph Robert McMaster ; the Defendants, Robert Joseph Hayes and Francis William Hayes are the children of the late Margaret Hayes, deceased, who was a sister of said intestate ; the Defendant Dennis Hayes was the husband of the said Margaret Hayes, and is the father of said infant Defendants.

3. Your Complainant and the said Defendants, Patrick Hepburn, John Hepburn, Joseph Robert McMaster, George Alphonsus McMaster, Frances Maria Murphy, Johanna Duffy, Ellen Duffy, Robert Joseph Hayes and Francis William Hayes, are the only heirs at law and next of kin of the said intestate.

4. The said Defendant, Edward Duffy, is the husband of the said Ellen Duffy, and claims some interest in the interest of his said wife in the lands hereinafter mentioned, as tenant by the curtesy or otherwise.

5. The said Defendant, Elizabeth M. McMaster, is the wife of the said Joseph Robert McMaster and claims dower in the said lands.

6. The Defendant, Dennis Hayes, claims to have an interest in said lands, as tenant by the curtesy in right of his said wife deceased.

7. Shortly after the death of the said intestate, the Defendant, James Henry Ryan, took out letters of administration to the estate and effects of the said intestate, and became and now is the personal representative of the said intestates estate, and the said Ryan took possession of the personal and real estate of the said intestate.

8. The said intestate was at the time of his death the owner in fee simple, and seized for his own use and benefit, of the lands and premises described as follows, that is to say : All and singular, that certain parcel or tract of land, situate, lying and being in the city of London, in the county of Middlesex, in the province of Ontario, containing by admeasurement one-fifth of an acre, more or less, being composed of lot number seven on the south side of Philip street, in the said city of

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London, as laid down in the plan and survey made by William Robinson, P. L. S., and registered in the Registry Office of the said city of London.

Also, all and singular, that certain other parcel or tract of land and premises, situate, lying and being in the township of London, in the county and province aforesaid, being composed of lot No. twelve, in concession C, in the said township, which may be described as commencing on the northerly limit of a street laid out and known as the continuation of East Bathurst street, distant two hundred and seventy feet easterly from the intersection of the said northerly limit, with the easterly limit of Adelaide street, thence easterly along the northern limit of Bathurst street aforesaid forty-five feet; thence northerly parallel to Adelaide street to the southerly limit of the Great Western Railway to a point where a line drawn from the place of beginning northerly parallel to Adelaide street would intersect the southerly limit of the Railway, and thence southerly to the place of beginning.

9. The said intestate, prior to his death, erected buildings and made valuable improvements on the said lands.

10. The said intestate possessed at the time of his death a considerable amount of personal property, all of which came into the hands of the said Defendant Ryan, who resides in the said city of London, where the said intestate had his domicile at the time of his death, but the particulars of which personal property your complainant is unable to set forth.

11. That some time after the death of said intestate, the said Ryan obtained from your Complainant and one of the other heirs of the said intestate, a power of attorney, purporting to authorise him, the said Ryan, to sell the said lands and wind up the said estate and remit the proceeds to the parties entitled, all of which said Ryan undertook to do, but he has not carried out the said undertaking, and has not remitted any portion of the monies or proceeds of said estate to your Complainant or any of the said parties entitled.

12. After obtaining said power of attorney, the Defendant, Ryan entered into a contract with the said Defendant Frederick Rowland for the sale to said Rowland of the secondly described parcel of land, and the said Ryan received part of the purchase money therefor, but no conveyance was made of said land to said Rowland, and the said contract has never been carried out, and the plaintiff is unable to state the terms and particulars of said contract.

13. The said Defendant Rowland, was put into possession by the Defendant, Ryan, of the land included in said contract, and claims performance of said contract under which he is in possession as aforesaid, but your Complainant is unable to say whether the said contract is a proper one, or whether the same is valid and binding on the said heirs.

14. Ever since the death of the said intestate, the Defendant Ryan has been and now is in the possession of the said real estate, and in receipt of the rents and profits thereof, excepting as to the said portion purchased by said Rowland as to which he has been in possession since the said contract and is now in possession, the said Ryan having been in possession up to that time.

15. That a reasonable time before commencing this suit, your Complainant demanded from the said Ryan an account of the said estate and of his dealings therewith; but although the said Defendant Ryan did profess or assume to give some account, yet such alleged account was only a partial one and did not embrace all the matters aforesaid, and the Defendant has never, in fact rendered any proper or sufficient account in the premises, but hath always neglected and refused so to do; and although Plaintiff hath demanded his share of the monies of said estate, collected and received by the Defendant Ryan, yet he has not paid the same, nor any part thereof, to the Plaintiff.

16. The said lands have never been partitioned nor divided amongst the said heirs.

17. The Plaintiff charges and submits that a sale of the said lands and a division of the proceeds thereof, would be more beneficial than a partition of said lands, and the said lands could not be advantageously or properly partitioned amongst the parties entitled.

18. The Plaintiff submits that the said lands ought to be sold under the decree and direction of this Honorable Court, and that the said sale to the Defendant Rowland ought to be confirmed and carried into effect and the purchase money paid into Court to the credit of this cause, provided that

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in the opinion of this Honorable Court it shall appear that the said sale to the Defendant Rowland was and is a proper sale and ought to be completed and carried into effect.

19. The Plaintiff submits that the Defendant Ryan ought to account in respect of his dealings with the said real and personal estate, and that the said estate ought to be administered and wound up under the decree and directions of this Court, and that all usual and proper accounts and enquiries ought to be taken and made in the premises.

Your Complainant therefore prays as follows :

(1). That an administration decree may be made for the administration and winding up of the said estate, and that all usual and proper accounts and enquiries may be taken and made, and the said estate got in and wound up under the said decree.

(2). That the said Defendant, James Henry Ryan, may be ordered to account, under the direction and decree of this Honorable Court, respecting his dealings with said real and personal estate, and for all the said personal estate received by him, and which by the exercise of due diligence he ought to have received, and for the rents and profits and purchase moneys of the said real estate received by him, and that he may be charged with interest on balances from time to time in his hands, and that he may be ordered to pay the said amounts into Court to the credit of this cause.

(3). That the said lands may be sold under the decree of this Honorable Court ; and as to the said lands included in the said contract with the said Rowland, that an enquiry be directed respecting the same, and in the event of the said contract being confirmed by this Honorable Court, that the same be ordered to be carried into execution and the balance of purchase money payable by said Rowland be declared to form a lien on the lands so purchased by him, and that said balance be ordered to be paid into Court by him to the credit of this cause, with interest, and that a proper conveyance be made to him, and that such further or other decree be made in respect of such last mentioned lands as may be found proper.

(4) That the interests of all parties in the said estate may be ascertained and settled, and the proceeds of said estate paid out and distributed in a due course of administration.

4a. That the said Defendant Ryan may be ordered to pay such part of the costs of this suit as to this Honorable Court may seem proper.

4b. That the Plaintiff may be paid his costs of this suit as between solicitor and client.

(5). That such further and other decree be made, and relief granted, in the premises as may seem meet.

(6). That for the purposes aforesaid, all proper directions may be given and accounts taken.

(7). And your Complainant will ever pray.

T. H. SPENCER.